

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WESLEY JAY MYERS and DALE)
KENNETH GRASSMAN,)

Appellants,)

Vs.)

UNITED STATES OF AMERICA,)

Appellee.)

No. 21584 ✓

PETITION FOR RE-HEARING
ON APPEAL

FILED

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Appellants,)	No. 21584
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UNITED STATES OF AMERICA,)	PETITION FOR RE-HEARING
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Defendant, Wesley Jay Myers, respectfully
moves for an order permitting a re-hearing on the
appellate process initiated by Defendant, argued
8 January 1968 and the subject of opinion by this
Court.

The original opinion affirmed judgment of the U. S. District Court for Western District of Washington, Northern Division.

BASIS FOR PETITIONED RE-HEARING

The published opinion of the Court included a comment related to Defendant's denial of a right to confront and cross examine a witness.

Purported "testimony" of the witness (Miller) was delivered by implication through the mouth of the Prosecutor.

Defendant was disarmed and left without opportunity to explore the substance and truth of damaging assertions allegedly made by the witness en absentia.

This Court's opinion denied Constitutional violation in the following language:

"Finally, it is said that the Defendants were unconstitutionally deprived of their right to confront and cross-examine Miller.

They never asked for that right; (emphasis supplied) no testimony of Miller was used against them."

The transcript of the trial includes the following language:

By Mr. Rousso:

"If there is a Mr. Miller, and such a statement was made to him, the opportunity was present for the government to bring it in on their direct and to testify to any conversation made with this Defendant. That was not done."

There are other instances wherein "Miller's" presence was sought by Defendants.

It is patent that this appellate tribunal was unaware of language which included a valid request that "Miller" be produced coupled with a clear objection that "Miller's" outside statements be not used against Defendants.

The use of such evidence is violative of Amendment VI, U. S. Const. and the use of "Miller's"

damaging statement delivered through the mouth of the Prosecutor is also clearly hearsay.

The Prosecutor was, in effect, testifying unsworn and was immune from cross examination. The purported meaning of the statement was sinister to a degree that would tip the scale away from acquital and toward condemnation.

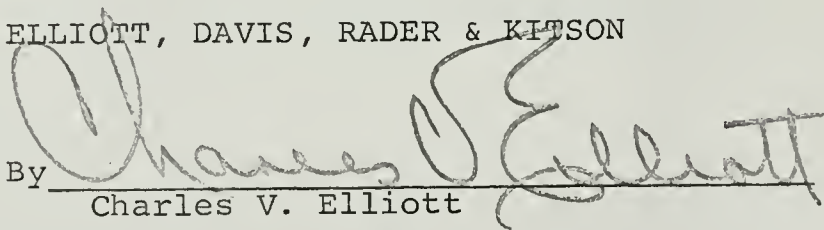
On basis of the foregoing we request opportunity to present the proof of this Constitutional violation supported by authoritative decision.

DATED this 28th day of March 1968.

Respectfully submitted,

ELLIOTT, DAVIS, RADER & KITSON

By


Charles V. Elliott

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UNITED STATES OF AMERICA,)	CERTIFICATE OF COUNSEL
)	
Appellee.)	

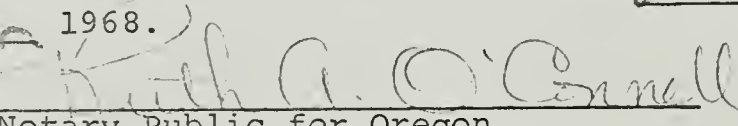
Defendant, Wesley Jay Myers, has filed a petition for re-hearing and the undersigned, as counsel, hereby states to the Court that the petition is well-founded and is not entered for purpose of delay.

ELLIOTT, DAVIS, RADER & KITSON

By 
Charles V. Elliott

STATE OF OREGON)
) ss.
County of Mult.)

day of March Subscribed and sworn to before me this 28th
1968.


Notary Public for Oregon
My Commission Expires: 12/10/71

